CERTIFICATE

Supreme Court of the United States

OCTOBER TERM, 1932

No. 729

DANIEL W. O'DONOGHUE

vs.

THE UNITED STATES

ON CERTIFICATE FROM THE COURT OF CLAIMS

FILED FEBRUARY 24, 1933

(37,426)

(37,426)

SUPREME COURT OF THE UNITED STATES

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., FEBRUARY 27, 1933

[fol. 1]

IN COURT OF CLAIMS OF THE UNITED STATES

No. 42232

DANIEL W. O'DONOGHUE

v.

THE UNITED STATES

STATEMENT OF FACTS AND CERTIFICATE

Messrs. John S. Flannery, Daniel W. O'Donoghue, Jr., John W. Davis, and George E. Hamilton appeared for the plaintiff.

Messrs. H. B. Holland and Charles F. Kincheloe appeared for the defendant.

Before Acting Chief Justice Green, Judge Littleton, Judge Whaley (Judge Williams taking no Part; Chief Justice Booth Taking no Part on Account of Illness)

The Court of Claims hereby certifies that the record of the above-entitled case now pending before it discloses the following:

The plaintiff, Daniel W. O'Donoghue, has duly filed his petition in the Court of Claims on the nineteenth day of January, 1933, in which he claims and asks judgment against the United States in the sum of $500, as salary due him for the months of July to December, 1932, inclusive, all of which will more particularly appear from his said petition, a copy of which accompanies this certificate and is marked "Exhibit A".

[fol. 2] The petition of plaintiff, among other things, alleges in substance that on February 23, 1932, he was appointed by the President of the United States, an Associate Justice of the Supreme Court of the District of Columbia, by and with the consent of the Senate, and on the twenty-ninth day of February, 1932, duly qualified as such Associate Justice and ever since said date has been engaged in the performance of his duties as such Associate Justice of the Supreme Court of the District of Columbia.

From and after the date of his appointment and entry upon his duties he received a salary as Associate Justice of the Supreme Court of the District of Columbia at the rate of $10,000 a year until June 30, 1932, pursuant to the provisions of the Act of December 13, 1926, "to fix the salaries of certain Judges of the United States" (44 Stat. 919-920).

From and after July 1, 1932, and for the months of July, August, September, October, November, and December, 1932, his salary and compensation was reduced ten per cent pursuant to a ruling of the Comptroller General, and by reason of which $500 of his salary for the period above mentioned is unpaid. The ruling of the Comptroller General was based upon the Act approved June 30, 1932, making appropriations for the legislative branch of the Government for the fiscal year ending June 30, 1933 (47 Stat. 382, 399), in which was incorporated certain provisions known as the Economy Bill. In said ruling, the Comptroller General held, among other things, that the Supreme [fol. 3] Court and Court of Appeals of the District of Columbia were "legislative" and not "constitutional" courts entitled to the protection of Section 1, Article III, of the Constitution, and that the compensation of Justices thereof could be diminished.

Plaintiff further avers in his petition that the said courts of the District of Columbia are inferior courts of the United States, created and established by virtue of the provisions of Article III, Section 1, of the Constitution thereof, and by reason of the provisions therein contained the aforesaid deduction from his compensation was contrary to the provisions of the Constitution and unlawful.

Plaintiff is the owner of the claim, of which there has been no assignment or transfer and has at all times borne true allegiance to the Government of the United States and never in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government, and is a citizen of the United States.

To this petition, the defendant has filed a demurrer on the following grounds:

"1. The petition does not state a cause of action against the defendant within the jurisdiction of this court.

2. The petition does not state a cause of action against the defendant.

[fol. 4] 3. The defendant specially demurs to said petition for the reasons that—

(a) The justices of the Supreme Court of the District of Columbia are not judges of "inferior courts" within the meaning of Section 1 of Article 3 of the Constitution of the United States, and are, therefore, not "officers whose compensation may not, under the Constitution, be diminished during their continuance in office" within the meaning of Section 104 (a) of the Act of June 30, 1932, c. 314, 47 Stat. 382, 400.

(b) Said petition does not set forth facts sufficient to give rise to an implied agreement between plaintiff and defendant that plaintiff's compensation should not be reduced during his continuance in office.

(c) Plaintiff's compensation being payable, under the Act of June 29, 1932, c. 308, 47 Stat. 343, 368, out of revenues appropriated for activities of the District of Columbia, plaintiff's sole cause of action, if any, is against the District of Columbia, and is, therefore, not within the jurisdiction of this Court.

(d) In so far as the petition seeks the determination of questions not involving the Constitution of the United States, the jurisdiction of this Court is barred by Section 111 of the Act of June 30, 1932, c. 314, 47 Stat. 382, 403."

The defendant, by the filing of this demurrer, admits the facts stated in the petition to be true, and upon the [fol. 5] record before it the Court finds it necessary for a proper disposition of the case that certain constitutional questions should be determined. These constitutional questions are as follows:

QUESTIONS CERTIFIED

I. Does Section 1, Article III, of the Constitution of the United States apply to the Supreme Court of the District of Columbia and forbid a reduction of the compensation of the Justices thereof during their continuance in office?

II. Can the compensation of a Justice of the Supreme Court of the District of Columbia be lawfully diminished during his continuance in office?

It is respectfully requested that the Supreme Court of the United States give appropriate instructions on the above questions and certify and transmit the same to the Court of Claims of the United States for its guidance in the further progress of the case.

Wm. R. Green, Acting Chief Justice. Benjamin H. Littleton, Judge. Richard S. Whaley, Judge.

[fol. 6] EXHIBIT "A" TO CERTIFICATE

IN COURT OF CLAIMS OF THE UNITED STATES

No. 42232

DANIEL W. O'DONOGHUE

vs.

THE UNITED STATES

PETITION

The plaintiff, Daniel W. O'Donoghue respectfully states:

I. He is a citizen of the United States and a resident of the District of Columbia.

II. Plaintiff was given by the President of the United States an ad interim appointment as Associate Justice of the Supreme Court of the District of Columbia on October 28th, 1931, and thereafter was nominated and by and with the advice and consent of the Senate was permanently appointed by the President of the United States on February [fol. 7] 23, 1932, as an Associate Justice of the Supreme Court of the District of Columbia and thereafter on the 29th day of February, 1932, duly qualified as such Associate Justice and ever since said date has been actively engaged in the performance of his duties as such Associate Justice of the Supreme Court of the District of Columbia.

III. Plaintiff was so permanently appointed and commissioned to hold said office during good behavior and at the time of his appointment the salary of the office of an Associate Justice was permanently fixed at the rate of Ten Thousand Dollars ($10,000) per annum by the Act of Congress approved December 13th, 1926, "to fix the salaries of certain Judges of the United States" (44 Stats. 919-920).

Under the provisions of Section 714 of the Revised Statutes of the United States, as amended—which was derived from the Act of April 10th, 1869 (C. 22, Sec. 5, 16 Stats. 45), and is now Section 260 of the Judicial Code and Section 375 of the United States Code—as further compensation for services rendered and to be rendered, the plaintiff, after having held a commission as Justice of said Court for at least ten years continuously, and upon attaining the age of 70 years, was given the right to resign and to thereafter receive during the residue of his natural life the salary payable at the time of such resignation for the office that he then held, or, instead of resigning, to retire from active service on the Bench upon the salary of which he was in receipt at the time of such retirement.

IV. Plaintiff further states that at the time of his appointment he was, and had been for many years, engaged [fol. 8] in the general practice of the law before the Supreme Court of the United States and all the Courts of the District of Columbia, and that he was induced to relinquish the greater emoluments of private practice for public service upon the Bench because from his knowledge of the decisions of this Court and of the Supreme Court of the United States he understood and believed that the Supreme Court of the District of Columbia was an inferior Court of the United States created under Section 1, Art. III of the Constitution and that under said Section 1 he would receive a compensation which could not be diminished during his continuance in said office and that when eligible to retire or resign under the Retirement Act aforesaid he would continue thereafter to receive for the remainder of his life the compensation to which he was entitled on the date of such retirement or resignation without diminution.

V. From the date of his appointment as aforesaid plaintiff was paid the salary of the office as so fixed to and in-

cluding December 31st, 1932, less deductions hereinafter mentioned. By the Act "making appropriations for the Government of the District of Columbia and other activities chargeable in whole or in part against the revenues of such District for the fiscal year ending June 30th, 1933, and for other purposes," approved June 29th, 1932 (47 Stats. 343, 368), appropriation was made by the Congress to pay the compensation of the plaintiff and other Justices of the various Courts in the District of Columbia, and plaintiff [fol. 9] is informed and avers that there are sufficient funds in the Treasury of the United States available for such purpose.

In the Act approved June 30th, 1932, "making appropriation for the legislative branch of the Government for the fiscal year ending June 30th, 1933" (47 Stats. 382, 399), the Congress incorporated certain provisions known as the Economy Bill and on or about the 13th of July, 1932, as plaintiff is informed and avers, the Comptroller General of the United States made a ruling in which he held, among other things, that the Supreme Court and Court of Appeals of the District of Columbia were "legislative" and not "constitutional" Courts entitled to the protection of Section 1, Art. III, of the Constitution and that the compensation of the Justices thereof, whether active, retired, or resigned, could be diminished.

The Disbursing Officer of the Department of Justice pursuant to said ruling of the Comptroller General reduced the aforesaid annual compensation to which plaintiff was entitled by the deduction of ten per cent (10%) thereof and, notwithstanding his protest, plaintiff was paid at this reduced rate for the months of July, August, September, October, November and December, 1932, whereby he has suffered a loss of compensation to which he is justly entitled in the sum of Five Hundred Dollars ($500) and is informed that similar deductions will continue to be made in the future. Plaintiff is also informed and avers that similar deductions have been made and will continue to be made from the salaries of his Associate Justices and [fol. 10] from the compensation of Walter I. McCoy, former Chief Justice, and Wendell P. Stafford, former Associate Justice of the Supreme Court of the District of Columbia, who retired December 8th, 1929, and May 2nd, 1931, re-

spectively, after becoming eligible to do so under the provisions of the aforesaid Retirement Act then in force.

VI. Plaintiff is advised and avers that the ruling of the Comptroller General aforesaid, and the deductions from the salary of plaintiff made by the disbursing officer of the Department of Justice pursuant thereto, are contrary to and in direct violation of the terms of the so-called Economy Bill of June 30, 1932, aforesaid, because

(1) Section 106 of said Economy Bill specifically applies only to "the *retired pay* of all Judges" and plaintiff has not retired but is actively engaged in the performance of the duties of his office, and Section 107 (5) of said Economy Bill specifically applies only to "*salaries and retired pay* of all Judges (except Judges whose compensation may not, under the Constitution, be diminished during their continuance in office), if such salaries or retired pay are at a rate *exceeding $10,000 per annum*, shall be at the rate of $10,000 per annum, and,

(2) in that the said act specifically excepts from the operation of the provisions thereof judges whose compensation may not, under the Constitution, be diminished during their continuance in office;"

that plaintiff is such a judge whose compensation may not, under the Constitution, be diminished during his continu-[fol. 11] ance in office; and that therefore the said ruling of the Comptroller General, and the deductions of the disbursing officer of the Department of Justice pursuant thereto, are contrary to law and illegal.

VII. Plaintiff is advised and avers that the ruling of the Comptroller General that the salary of plaintiff may be diminished during his continuance in office, and the deductions aforesaid of the disbursing officer of the Department of Justice from the salary of plaintiff resulting in diminution of plaintiff's compensation during his continuance in office, contravene the Constitution of the United States and are therefore unconstitutional, illegal, and void, in that plaintiff having been appointed to serve during good behavior may not be removed except by impeachment and his compensation may not, under the Constitution, be diminished during his continuance in office.

VIII. Plaintiff is advised and avers that the ruling of the Comptroller General that the salary of plaintiff may be diminished during his continuance in office, and the deductions aforesaid of the disbursing officer of the Department of Justice from the salary of plaintiff resulting in diminution of plaintiff's compensation during his continuance in office, contravene the Constitution of the United States and are therefore unconstitutional, illegal, and void, in that plaintiff is a judge of an inferior court of the United States within the terms of Article III of the Constitution, namely, the Supreme Court of the District of Columbia, whose compensation may not be diminished during his continuance in office.

[fol. 12] Plaintiff states that the said Supreme Court of the District of Columbia is vested by acts of Congress with all the jurisdiction and all the power conferred by the Constitution under Article III on the United States, and that the powers so conferred on the United States by said Article have been exercised by the Court of Appeals from its organization and by the Supreme Court of the District of Columbia, and its predecessor courts, from the establishment of the government. Plaintiff therefore charges that in the organization of the courts of the District of Columbia, the Congress of the United States acted by virtue of Article III of the Constitution and thereby constituted said courts inferior courts of the United States, and to the extent and only to the extent that Congress has enlarged and extended the powers of said courts did it act under any other than Article III.

Plaintiff therefore avers that the said Courts of the District of Columbia, to the extent that they exercise all the judicial powers granted to the United States, are inferior courts of the United States under said judiciary provision of the Constitution, and that they are none the less inferior courts under the said article of the Constitution because, by reason of their location at the seat of government, Congress, under Article I, section 8, has conferred upon them powers and jurisdiction which it may not confer upon other Federal courts.

IX. Plaintiff further states that while reluctant to institute a suit which may result in personal benefit to himself, [fol. 13] he feels that it is his duty to the Court, to the Bar

and to the people of the District of Columbia to have the status of the Court defined and settled as soon as it may be possible.

X. Plaintiff is further advised and avers that his right to recover the amount of compensation so unlawfully deducted is founded upon the Constitution of the United States, the Acts of Congress hereinbefore referred to fixing the compensation of the Associate Justices of the Supreme Court of the District of Columbia, upon Section 714 of the Revised Statutes of the United States, as amended, and also upon an implied contract between the plaintiff and the United States arising from his acceptance and discharge of the duties of such office as aforesaid.

XI. Plaintiff further states that he is the legal owner of the claim for said compensation so deducted and that there has been no assignment of the whole or any part thereof; that so far as he knows, no action has been had thereon either in the Congress or in any of the Departments of the Government; that he is justly entitled to the amount claimed, excluding all just credits and offsets; that he has at all times borne true faith and allegiance to the Government of the United States, and has not at any time voluntarily aided, abetted or given encouragement to rebellion against it.

XII. Plaintiff further states that on or about May 25th, 1903, in the case of Harriet T. James v. United States (38 Ct. Cls. 615) this Court, in a carefully considered opinion rendered by Judge Howry, reviewed the status of said [fol. 14] Supreme Court of the District of Columbia and held that it was one of the inferior courts of the United States permanently established under Section 1, Art. III, of the Constitution—a repository of a part of the judicial power of the United States—and that the Justices thereof were entitled to the constitutional guarantee of judicial independence arising from tenure of office and permanence in salary and that such court was not merely a legislative creation wholly established under the exclusive power of legislation over the District of Columbia conferred upon the Congress by Section 8, Article I, of the Constitution. Upon appeal to the Supreme Court of the United States (202 U. S. 401) that Court held that the statute in question cov-

ered the compensation payable to Justice James without passing upon or disaffirming the views expressed by this Court as to the constitutional character of the Supreme Court of the District of Columbia.

As the ruling and decision of the Comptroller General, which resulted in the deduction aforesaid and has given rise to this claim, is in direct conflict with the decision of this Court in the James case and cites the decision of the Supreme Court in Ex parte Bakelite Corporation (279 U. S. 438), in which there are some expressions seemingly in conflict with the decision in the James case, and also with the decision of the Court of Appeals of the District of Columbia in Pitts v. Peak, 50 Fed. (2d) 485, and the decision of the Supreme Court of the United States in Claiborne-Annapolis Ferry Company v. United States, 285 U. S. 382 (in which said Pitts case is cited with approval), and as the questions [fol. 15] involved in this and the companion case instituted on behalf of the Justices of the Court of Appeals of the District of Columbia are of great importance not only to the Justices particularly concerned but also to the Bar and citizens of the District of Columbia, as well as to the National Government, and as it is necessary to all concerned that there should be a prompt determination of the status of the courts of the District of Columbia, and, furthermore, as there can be no dispute about the facts, plaintiff respectfully requests that this Court certify the questions of law involved to the Supreme Court of the United States for consideration and decision under the provisions of Section 3(a) of the Act of February 13th, 1925.

XIII. Wherefore, the premises considered, plaintiff prays the award and judgment of this Honorable Court that he is entitled to have and recover of the United States the sum of Five Hundred Dollars ($500), as above demanded, and that he may be given such other and further relief as the nature of his case may require or the Court may deem just.

Daniel W. O'Donoghue, Plaintiff. John S. Flannery, Daniel W. O'Donoghue, Jr., Attorneys for Plaintiff. John W. Davis, George E. Hamilton, of Counsel.

[fol. 16] *Duly sworn to by Daniel W. O'Donoghue. Jurat omitted in printing.*

[fols. 17 & 18] CLERK'S CERTIFICATE

I, Willard L. Hart, Chief Clerk of the Court of Claims of the United States, do hereby certify that the foregoing certificate in the case of Daniel W. O'Donoghue v. The United States, No. 42,232, was duly filed and entered of record in my office by order of said court, and as directed by said court, the said certificate is by me transmitted to the Supreme Court of the United States for its action thereon.

In testimony whereof I hereunto subscribe my name and affix the seal of the Court of Claims of the United States, at my office in Washington, D. C., this 24th day of February, A. D. 1933.

Willard L. Hart, Clerk Court of Claims of the United States. (Seal Court of Claims.)

Endorsed on cover. File No. 37,426. Court of Claims. Term No. 729. Daniel W. O'Donoghue, vs. The United States. Certificate. Filed February 24, 1933. File No. 37,426.

CLERK'S COPY

CERTIFICATE

Supreme Court of the United States

OCTOBER TERM, 1932

No. 730

WILLIAM HITZ

vs.

THE UNITED STATES

ON CERTIFICATE FROM THE COURT OF CLAIMS

FILED FEBRUARY 24, 1933

(37,427)

(37,427)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1932

No. 730

WILLIAM HITZ

vs.

THE UNITED STATES

ON CERTIFICATE FROM THE COURT OF CLAIMS

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., FEBRUARY 27, 1933

[fol. 1]

IN COURT OF CLAIMS OF THE UNITED STATES

No. 42233

WILLIAM HITZ

v.

THE UNITED STATES

STATEMENT OF FACTS AND CERTIFICATE

Messrs. John W. Davis, George E. Hamilton, and John S. Flannery appeared for the plaintiff.

Messrs. H. B. Holland and Charles F. Kincheloe appeared for the defendant.

Before Acting Chief Justice Green, Judge Littleton, Judge Whaley (Judge Williams Taking no Part; Chief Justice Booth Taking no Part on Account of Illness).

The Court of Claims hereby certifies that the record of the above-entitled case now pending before it discloses the following:

The plaintiff, William Hitz, has duly filed his petition in the Court of Claims on the nineteenth day of January, 1933, in which he claims and asks judgment against the United States in the sum of $1,250, as salary due him for the months of July to December, 1932, inclusive, all of which will more particularly appear from his said petition, a copy of which accompanies this certificate and is marked "Exhibit A".

[fol. 2] The petition of plaintiff, among other things, alleges in substance, that on December 5, 1930, he was appointed by the President of the United States, an Associate Justice of the Court of Appeals of the District of Columbia, by and with the consent of the Senate, and on February 13, 1931, duly qualified as such Associate Justice and ever since said date has been engaged in the performance of his duties as such Associate Justice of the Court of Appeals of the District of Columbia.

From and after the date of his appointment and entry upon his duties he received a salary as Associate Justice

of the Court of Appeals of the District of Columbia at the rate of $12,500 a year until June 30, 1932, pursuant to the provisions of the Act of December 13, 1926, "to fix the salaries of certain Judges of the United States" (44 Stat. 919-920).

From and after July 1, 1932, and for the months of July, August, September, October, November, and December, 1932, his salary and compensation was reduced twenty per cent pursuant to a ruling of the Comptroller General, and by reason of which $1,250 of his salary for the period above mentioned is unpaid. The ruling of the Comptroller General was based upon the Act approved June 30, 1932, making appropriations for the legislative branch of the Government for the fiscal year ending June 30, 1933 (47 Stat. 382, 399), in which was incorporated certain provisions known as the Economy Bill. In said ruling, the Comptroller General held, among other things, that the [fol. 3] Supreme Court and Court of Appeals of the District of Columbia were "legislative" and not "constitutional" courts entitled to the protection of Section 1, Article III, of the Constitution, and that the compensation of Justices thereof could be diminished.

Plaintiff further avers in his petition that the said courts of the District of Columbia are inferior courts of the United States, created and established by virtue of the provisions of Article III, Section 1, of the Constitution thereof, and by reason of the provisions therein contained the aforesaid deduction from his compensation was contrary to the provisions of the Constitution and unlawful.

Plaintiff is the owner of the claim, of which there has been no assignment or transfer and has at all times borne true allegiance to the Government of the United States and never in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government, and is a citizen of the United States.

To this petition, the defendant has filed a demurrer on the following grounds:

"1. The petition does not state a cause of action against the defendant within the jurisdiction of this Court.

2. The petition does not state a cause of action against [fol. 4] the defendant.

3. The defendant specially demurs to said petition for the reasons that—

(a) The justices of the Court of Appeals in the District of Columbia are not judges of 'inferior courts' within the meaning of Section 1 of Article 3 of the Constitution of the United States, and are, therefore, not 'judges whose compensation may not, under the Constitution, be diminished during their continuance in office' within the meaning of Section 107 (a) (5) of the Act of June 30, 1932, c. 314, 47 Stat. 382, 402.

(b) Said petition does not set forth facts sufficient to give rise to an implied agreement between plaintiff and defendant that plaintiff's compensation should not be reduced during his continuance in office.

(c) Plaintiff's compensation being payable under the Act of June 29, 1932, c. 308, 47 Stat. 343, 368, out of revenues appropriated for activities of the District of Columbia, plaintiff's sole cause of action, if any, is against the District of Columbia and is, therefore, not within the jurisdiction of this Court."

The defendant, by the filing of this demurrer, admits the facts stated in the petition to be true, and upon the record before it the Court finds it necessary for a proper disposition of the case that certain constitutional questions should be determined. These constitutional questions are as follows:

[fol. 5] QUESTIONS CERTIFIED

I. Does Section 1, Article III, of the Constitution of the United States apply to the Court of Appeals of the District of Columbia and forbid a reduction of the compensation of the Justices thereof during their continuance in office?

II. Can the compensation of a Justice of the Court of Appeals of the District of Columbia be lawfully diminished during his continuance in office?

It is respectfully requested that the Supreme Court of the United States give appropriate instructions on the above questions and certify and transmit the same to the

Court of Claims of the United States for its guidance in the further progress of the case.

Wm. R. Green, Acting Chief Justice. Benjamin H. Littleton, Judge. Richard S. Whaley, Judge.

[fol. 6] EXHIBIT "A" TO CERTIFICATE

IN COURT OF CLAIMS OF THE UNITED STATES

No. 42233

WILLIAM HITZ

v.

THE UNITED STATES

PETITION

The plaintiff, William Hitz, respectfully states:

I. He is a citizen of the United States and a resident of the District of Columbia.

II. Plaintiff was appointed by the President an Associate Justice of the Court of Appeals of the District of Columbia December 5th, 1930, duly confirmed by the Senate January 28th, 1931, and qualified on, to wit, February 13th, 1931 (under a commission dated February 6th, 1931), and ever since has been actively engaged in the performance of the duties of such Associate Justice.

[fol. 7] III. Plaintiff was appointed, confirmed and commissioned to hold said office during good behavior and at the time of his appointment the salary of the office of an Associate Justice of the Court of Appeals of the District of Columbia was permanently fixed at the rate of Twelve Thousand Five Hundred Dollars ($12,500) per annum by the Act of Congress approved December 13th, 1926, "to fix the salaries of certain Judges of the United States" (44 Stats. 919-920).

Under the provisions of Section 714 of the Revised Statutes of the United States, as amended—which was derived from the Act of April 10th, 1869 (C. 22, Sec. 5, 16 Stats. 45), and is now Section 260 of the Judicial Code and Section 375

of the United States Code—as further compensation for services rendered and to be rendered, the plaintiff, after having held a commission as Justice of said Court for at least ten years continuously, and upon attaining the age of 70 years, was given the right to resign and to thereafter receive during the residue of his natural life the salary payable at the time of such resignation for the office that he then hold, or, instead of resigning, to retire from active service on the Bench upon the salary of which he was in receipt at the time of such retirement.

IV. Plaintiff further states that at the time of his appointment he was, and had been for many years, a Justice of the Supreme Court of the District of Columbia, and had frequently been called upon to consider the history and status of the Courts of said District, that when tendered the position upon the Court of Appeals of the District of [fol. 8] Columbia he understood and believed, from his knowledge of the decisions of this Court and of the Supreme Court of the United States, that said Courts of the District of Columbia were inferior Courts of the United States created under Section 1, Art. III, of the Constitution, and that under Section 1 of said Article he would receive a compensation which could not be diminished during his continuance in said office of Associate Justice of the Court of Appeals and that when eligible to retire or resign under the Retirement Act aforesaid he would continue thereafter to receive for the remainder of his life the compensation to which he was entitled on the day of such retirement or resignation without diminution.

V. From the date of his appointment and qualification plaintiff was paid the salary of the office as so fixed to and including December 31st, 1932, less deductions hereinafter mentioned. By the Act "making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of such District for the fiscal year ending June 30th, 1933, and for other purposes," approved June 29th, 1932 (47 Stats. 343, 368), appropriation was made by the Congress to pay the compensation of the plaintiff and other Justices of the various Courts in the District of Columbia, and plaintiff is informed and avers that there are sufficient funds in the Treasury of the United States available for such purpose.

In the Act approved June 30th, 1932, "making appropriation for the legislative branch of the Government for the [fol. 9] fiscal year ending June 30th, 1933" (47 Stats. 382, 399), the Congress incorporated certain provisions known as the Economy Bill and on or about the 13th of July, 1932, as plaintiff is informed and avers, the Comptroller General of the United States made a ruling in which he held, among other things, that the Court of Appeals and Supreme Court of the District of Columbia were "legislative" and not "constitutional" Courts entitled to the protection of Section 1, Art. III, of the Constitution, and that the compensation of the Justices thereof whether active, retired or resigned, could be diminished.

The Disbursing Officer of the Department of Justice pursuant to said ruling of the Comptroller General reduced the aforesaid annual compensation to which plaintiff was entitled by the deduction of twenty per cent (20%) thereof and, notwithstanding his protest, plaintiff was paid at this reduced rate for the months of July, August, September, October, November and December, 1932, whereby he has suffered a loss of compensation to which he is justly entitled in the sum of Twelve Hundred and Fifty Dollars ($1,250) and is informed that similar deductions will continue to be made in the future. Plaintiff is also informed and avers that similar deductions have been made and will continue to be made from the salaries of his Associate Justices.

VI. Plaintiff is advised and avers that the ruling of the Comptroller General aforesaid, and the deductions from the salary of plaintiff made by the disbursing officer of the Department of Justice pursuant thereto, are contrary to [fol. 10] and in direct violation of the terms of the so-called Economy Bill of June 30, 1932, aforesaid, in that the said act specifically excepts from the operation of the provisions thereof judges whose compensation may not, under the Constitution, be diminished during their continuance in office; that plaintiff is such a judge whose compensation may not, under the Constitution, be diminished during his continuance in office; and that therefore the said ruling of the Comptroller General, and the deductions of the disbursing officer of the Department of Justice pursuant thereto, are contrary to law and illegal.

VII. Plaintiff is advised and avers that the ruling of the Comptroller General that the salary of plaintiff may be diminished during his continuance in office, and the deductions aforesaid of the disbursing officer of the Department of Justice from the salary of plaintiff resulting in diminution of plaintiff's compensation during his continuance in office, contravene the Constitution of the United States and are therefore unconstitutional, illegal, and void, in that plaintiff having been appointed to serve during good behavior may not be removed except by impeachment and his compensation may not, under the Constitution, be diminished during his continuance in office.

VIII. Plaintiff is advised and avers that the ruling of the Comptroller General that the salary of plaintiff may be diminished during his continuance in office, and the deductions aforesaid of the disbursing officer of the Department [fol. 11] of Justice from the salary of plaintiff resulting in diminution of plaintiff's compensation during his continuance in office, contravene the Constitution of the United States and are therefore unconstitutional, illegal, and void, in that plaintiff is a judge of an inferior court of the United States within the terms of Article III of the Constitution, namely, the Court of Appeals of the District of Columbia, whose compensation may not be diminished during his continuance in office.

Plaintiff states that the said Court of Appeals of the District of Columbia is vested by acts of Congress with all the jurisdiction and all the power conferred by the Constitution under Article III on the United States, and that the powers so conferred on the United States by said Article have been exercised by the said Court of Appeals from its organization and by the Supreme Court of the District of Columbia, and its predecessor courts, from the establishment of the Government. Plaintiff therefore charges that in the organization of the courts of the District of Columbia, including the said Court of Appeals, the Congress of the United States acted by virtue of Article III of the Constitution and thereby constituted said courts inferior courts of the United States, and to the extent and only to the extent that Congress has enlarged and extended the powers of said courts did it act under any other than Article III.

Plaintiff therefore avers that the said Court of Appeals of the District of Columbia, to the extent that it exercises all the judicial powers granted to the United States, is an inferior court of the United States under said judiciary [fol. 12] provision of the Constitution, and that it is none the less an inferior court under the said article of the Constitution because, by reason of its location at the seat of Government, Congress, under Article I, Section 8, has conferred upon it powers and jurisdiction which it may not confer upon other Federal courts.

IX. Plaintiff further states that while reluctant to institute a suit which may result in personal benefit to himself, he feels that it is his duty to the Court, to the Bar, to the citizens of the District of Columbia and to the people of the United States to have the status of the Court of Appeals, as an important national as well as local tribunal, defined and settled as soon as it may be possible.

X. Plaintiff is further advised and avers that his right to recover the amount of compensation so unlawfully deducted is founded upon the Constitution of the United States, the acts of Congress hereinbefore referred to fixing the compensation of the Justices of the Court of Appeals of the District, upon Section 714 of the Revised Statutes of the United States, as amended, and also upon an implied contract between the plaintiff and the United States arising from his acceptance and discharge of the duties of such office as aforesaid.

XI. Plaintiff further states that he is the legal owner of the claim for said compensation so deducted and that there has been no assignment of the whole or any part thereof; that so far as he knows, no action has been had thereon [fol. 13] either in the Congress or in any of the Departments of the Government; that he is justly entitled to the amount claimed, excluding all just credits and offsets; that he has at all times borne true faith and allegiance to the Government of the United States, and has not at any time voluntarily aided, abetted or given encouragement to rebellion against it.

XII. Plaintiff further states that on or about May 25th, 1903, in the case of Harriet T. James v. United States (38

Ct. Cls. 615), this Court, in a carefully considered opinion rendered by Judge Howry, reviewed the status of said Supreme Court of the District of Columbia and held that it was one of the inferior courts of the United States permanently established under Section 1, Art. III, of the Constitution—a repository of a part of the judicial power of the United States—and that the Justices thereof were entitled to the constitutional guarantee of judicial independence arising from tenure of office and permanence in salary and that such court was not merely a legislative creation wholly established under the exclusive power of legislation over the District of Columbia conferred upon the Congress by Section 8, Article I, of the Constitution. Upon appeal to the Supreme Court of the United States (202 U. S. 401) that Court held that the statute in question covered the compensation payable to Justice James without passing upon or disaffirming the views expressed by this Court as to the constitutional character of the Supreme Court of the District of Columbia.

As the ruling and decision of the Comptroller General, which resulted in the deduction aforesaid and has given rise [fol. 14] to this claim, is in direct conflict with the decision of this Court in the James case and cites the decision of the Supreme Court in ex parte Bakelite Corporation (279 U. S. 438), in which there are some expressions seemingly in conflict with the decision in the James case and also with the decision of the Court of Appeals of the District of Columbia in Pitts v. Peak, 50 Fed. (2d) 485, and the decision of the Supreme Court of the United States in Claiborne-Annapolis Ferry Company v. United States, 285 U. S. 382 (in which said Pitts case is cited with approval), and as the questions involved in this and the companion case instituted on behalf of the Justices of the Supreme Court of the District of Columbia are of great importance not only to the Justices particularly concerned but also to the Bar and citizens of the District of Columbia, as well as to the National Government, and as it is necessary to all concerned that there should be a prompt determination of the status of the courts of the District of Columbia, and, furthermore, as there can be no dispute about the facts—plaintiff respectfully requests that this Court certify the questions of law involved to the Supreme Court of the United States for consideration and decision

under the provisions of Section 3 (a) of the Act of February 13th, 1925.

XIII. Wherefore, the premises considered, plaintiff prays the award and judgment of this Honorable Court that he is entitled to have and recover of the United States the sum of Twelve Hundred and Fifty Dollars ($1,250), as above demanded, and that he may be given such other and further [fol. 15] relief as the nature of his case may require or the Court may deem just.

William Hitz, Plaintiff. John W. Davis, George E. Hamilton, John S. Flannery, Attorneys for Plaintiff.

Duly sworn to by William Hitz. Jurat omitted in printing.

[fols. 16 & 17] CLERK'S CERTIFICATE

I, Willard L. Hart, Chief Clerk of the Court of Claims of the United States, do hereby certify that the foregoing certificate in the case of William Hitz v. The United States, No. 42,233, was duly filed and entered of record in my office by order of said court, and as directed by said court, the said certificate is by me transmitted to the Supreme Court of the United States for its action thereon.

In testimony whereof I hereunto subscribe my name and affix the seal of the Court of Claims of the United States, at my office in Washington, D. C., this 24th day of February, A. D., 1933.

Willard L. Hart, Clerk Court of Claims of the United States.

(Seal Court of Claims.)

Endorsed on cover: File No. 37,427. Court of Claims. Term No. 730. William Hitz vs. The United States. Certificate. Filed February 24, 1933. File No. 37,427.